(5)

No. 96-1577

In The

Supreme Court of the United States

October Term, 1996

STATE OF ALASKA,

Petitioner,

v.

NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE HONORABLE THEODORE F. (TED) STEVENS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The Honorable Ted Stevens is the State of Alaska's senior member of the United States Senate, and a member of the Bar of this Court.[1]

Between 1956 and 1961, Ted Stevens served as Legislative Counsel, Assistant to the Secretary, and Solicitor of the U.S. Department of the Interior. In those positions, he participated in drafting the Alaska Statehood Act. When he entered the Senate in 1968, Ted Stevens was appointed to the Committee on Interior and Insular Affairs. During his tenure on the Committee, Stevens was a principal author of the Senate amendment to H. R. 10367, the bill Congress enacted in 1971 as the Alaska Native Claims Settlement Act (ANCSA). Ted Stevens also was a member of the House-Senate Conference Committee that wrote the enacted text of H. R. 10367.

In disregard of the express intent of Congress announced in numerous provisions of ANCSA, in the decision below the circuit court erroneously held that Congress intended 1.8 million acres of land in Alaska owned in fee simple by Neets'aii Gwich'in Alaska Natives to be a "dependent Indian community," and hence "Indian country," within the meaning of 18 U.S.C. § 1151. Unless corrected, the decision will irreparably harm the people of Alaska, both Native and non-Native, who until now have largely escaped the damage that

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[1] No counsel for a party has authored this brief in whole or in part. The Alaska State Legislature will make a monetary contribution to the preparation of the brief from funds the Legislature has appropriated for its own use.

Congress's early nineteenth century Indian policies inflicted in the coterminous states, and will severely damage the institutions Congress created to implement the ANCSA settlement. For those reasons, amicus curiae urges the Court to grant the State of Alaska's petition for certiorari.

The parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

In 1884, Congress established a new policy to guide its dealings with Alaska Natives, the content of which was dramatically different from its previous Indian policies. Rather than directing the President to negotiate treaties with Alaska Natives, the new policy required Natives to comply with the civil and criminal statutes to which non-Native residents of Alaska were subject. In 1912, Congress expanded that list of statutes to include enactments of the Alaska Territorial Legislature, and in 1958 to include enactments of the Alaska State Legislature. Contrary to the conclusion of the circuit court in the decision below, in 1971, Congress reaffirmed that policy through its enactment of ANCSA, by conveying forty-four million acres of land in fee simple to Native village and regional corporations organized under state law, and by subjecting the conveyed land to the jurisdiction of the Alaska State Legislature.

ARGUMENT

CONGRESS'S ALASKA NATIVE POLICY, 1884-1948

The Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, grants Congress "plenary and exclusive power over Indian affairs." *Washington v. Yakima Indian Nation*, 439 U.S. 463, 470 (1979).

Congress initially exercised that power to accomplish a single objective: the clearing of the public domain of the Native Americans who occupied it. Congress accomplished that objective first by the Senate ratifying treaties negotiated with tribes for the cession of land; in 1830 by delegating to the President authority to remove members of tribes that occupied land east of the Mississippi River to land located west of the river, 4 Stat. 411 (1830); and then by the Senate ratifying treaties that established reservations for tribes whose members occupied land west of the river. In 1871, Congress directed the President to cease negotiating treaties. 16 Stat. 566 (1871). But Congress continued to establish reservations on which Native Americans were compelled to reside.

Alaska Natives were spared the common Native American fate.

In 1868, Congress extended its laws "relating to customs, commerce, and navigation" to Alaska, 15 Stat. 240 (1868), and in 1873 designated Alaska as "Indian country" for the narrow purpose of prohibiting the sale of

alcohol. 17 Stat. 530 (1873).[2] But Congress did not turn its serious attention to Alaska until 1880.

Since the public domain by then had been largely cleared, the principal policy objective of the members of Congress and clergymen who in 1880 were interested in Indian policy was to prepare Native Americans who had survived the clearing for citizenship. *See generally* Frederick E. Hoxie, A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS, 1880-1920 (1984). The Presbyterian missionary Sheldon Jackson was both a member of that group and the principal lobbyist for Alaska residents who had petitioned Congress to grant Alaska a civil government. Ted C. Hinckley, *Sheldon Jackson, Presbyterian Lobbyist for the Great Land of Alaska*, Journal of Presbyterian History (March 1962). With respect to the Indian policy he advocated for Alaska, in a colloquy with Senator Manning Butler during the first hearing on Alaska civil government, Jackson advised as follows:

[2] In 1872 when it ordered the release of a Sitka resident who had been arrested for selling "spiritous liquor" to a Tlingit Indian, the Oregon district court noted that "because a country is inhabited or owned in whole or part by Indians" does not mean that it is "Indian country," and if, to prevent the sale of alcohol to Alaska Natives, "Congress . . . [thought] it desirable that . . . [the liquor control] provision[s] of the Indian Intercourse Act should be in force in Alaska, it can so provide. . . . " *United States v. Seveloff*, 1 Alaska Fed. 64 (D. Ore. 1872). Congress responded by enacting the 1873 Act. Three years later the same court noted that "Alaska is not 'Indian country' in the technical sense of that term any further than Congress has made it so." *Walters v. Campbell*, 1 Alaska Fed. 91, 94 (D. Ore. 1876).

> Jackson: It is not necessary that the United States should feed or clothe them [i.e., the Tlingit and Haida Indians of southeast Alaska], or make treaties with them. This enables us in our Indian policy to take a new departure; and treat them as American citizens. All that is necessary to be done is to afford them government and teachers, which they cannot procure themselves.
>
> Butler: In other words, you mean to say that if we should afford the protection of a well-organized government, they would subordinate themselves to the law of the United States. That is your idea?
>
> Jackson: That is my idea.

S. Rep. No. 457, 47th Cong., 1st Sess. 12 (1880).

In 1884 when it granted Alaska a civil government, Congress accepted Jackson's recommendations by subjecting Alaska residents, both Native and non-Native, to "the general laws of the State of Oregon," and by authorizing the Secretary of the Interior to operate schools "in the Territory of Alaska, without reference to race." Alaska Organic Act, §§ 7 and 13, 23 Stat. 24 (1884).[3]

[3] In addition to appropriating funds to the Department of the Interior for schools in Native villages, in 1915, Congress appropriated funds to enable the Department to open a Native hospital. 38 Stat. 862 (1915). From those statutes evolved the policy that Alaska Natives are to be afforded the same health care and other services that Congress provides to other Native Americans. To implement that policy, Congress has referenced Alaska Natives in statutes that establish Native American programs. *See e. g.*, Indian Health Care Improvement Act, Pub. L. No. 94-437, 90 Stat. 1400 (1976) (codified as amended at 25

Two years later, federal courts affirmed that Congress did not intend Alaska to be "Indian country." *Kie v. United States*, 1 Alaska Fed. 125 (D. Ore. 1886); *In Re Sah Quah*, 1 Alaska Fed. 136 (D. Alaska 1886). And that was the settled law when Alaska Governor Lyman Knapp in 1891 reported to Congress that:

> Since the passage of . . . [the Alaska Organic] Act, if not before, the courts assumed jurisdiction to try Indian offenders according to the laws of the United States, in no case allowing local customs among the tribes or native people to have any determining influence upon questions of punishment, as has ever been the case in the States where the tribal relation is recognized.

H. R. Exec. Doc. No. 1, Pt. 5, 52d Cong., 1st Sess. 498 (1891).

U.S.C. § 1601 *et seq.*) (Alaska Natives deemed "Indians" and Alaska Native villages deemed "Indian tribes" for the purpose of the Act). In the decision below, the circuit court concluded that "this patchwork of benefit programs demonstrates a continuing intent of Congress to maintain federal superintendence over Alaska Natives." *See* Pet. App. 22a. However, that conclusion misconstrues the blackletter rule that "a tribe may 'exist' for some purposes but not others." Felix S. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 7 (1982 ed.). Understanding that rule, Congress has treated Alaska Natives as "Indians" and has treated groups of Alaska Natives as "tribes" for the sole purpose of entitling Alaska Natives to participate in certain programs. But in doing so, Congress did not intend to alter the policy announced in 1884 and reaffirmed in ANCSA that Alaska Natives are members of the Alaska polity whose fee simple land, like that of non-Native members of the same polity, is subject to the jurisdiction of the Alaska State Legislature and its political subdivisions.

In 1899 and 1900, Congress enacted Alaska criminal and civil codes, 30 Stat. 1253 (1899); 31 Stat. 321 (1900), to which Native and non-Native Alaska residents were subject.[4]

In 1912, Congress authorized the citizens of Alaska to elect a territorial legislature, Pub. L. No. 62-334, 37 Stat. 512 (1912), to which Congress granted authority to assert jurisdiction over Alaska Natives living in Native villages. *See e. g.*, ch. 44 SLA 1913 (failure of Native parents to send their children to village grade schools made a criminal offense); ch. 11 SLA 1915 (Native Village Government Act authorizing Alaska Natives to establish "a self-governing village organization for the purpose of governing certain local affairs").

In 1924, Congress granted all Alaska Natives citizenship. Pub. L. No. 68-253, 43 Stat. 253 (1924). In response, in 1929 the Alaska Territorial Legislature rewrote its municipal code to eliminate references to noncitizen Indians and repealed the 1915 Native Village Government Act. Chs. 23 and 99 SLA 1929.[5]

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[4] In 1909, Congress authorized the appointment of village schoolteachers as "special peace officer[s]" authorized "to arrest . . . any native of the district of Alaska charged with the violation of any provisions of the Criminal Code of Alaska." Pub. L. No. 60-319, 35 Stat. 837 (1909). In 1958 in *United States v. Booth*, 161 F. Supp. 269, 273 (D. Alaska 1958), the district court noted that the 1909 Act is "evidence that Alaska Indians – even those in remote communities – are subject to Alaska territorial law."

[5] In 1913 the Legislature authorized communities "having fifty or more permanent inhabitants, exclusive of Indians, who are not citizens," to organize a municipal government. Ch. 47

That was the jurisdictional situation in 1932 when Secretary of the Interior Ray Lyman Wilbur advised Congress that

> In the United States statutes Alaska has never been regarded as Indian country. The United States has had no treaty relations with any of the aborigines of Alaska nor have they been recognized as the independent tribes with a government of their own. The individual native has always and everywhere in Alaska been subject to the white man's law, both Federal and territorial, civil and criminal.

Letter from Ray Lyman Wilbur to the Hon. Edgar Howard (March 14, 1932), *reprinted in Authorizing the Tlingit and Haida Indians to Bring Suit in the United States Court of Claims: Hearing on S. 1196 before the Senate Comm. on Indian Affairs*, 72d Cong., 1st Sess. 15-16 (1932).

And that was the jurisdictional situation in 1948 when Congress enacted 18 U.S.C. § 1151.

SLA 1913. Since most Alaska Natives were not citizens, the Legislature enacted the Native Village Government Act to enable Native residents of Native villages to organize municipal governments under territorial law. Between 1915 and 1929 "Native villages from Selawik in the northwest arctic to Angoon and Hoonah in southeast Alaska organized municipal governments under the 1915 Act. After Alaska Natives became citizens, Native villages such as Hydaburg organized municipal governments under the general laws of the Territory of Alaska." Report of the Governor's Task Force on Federal-State-Tribal Relations, p. 93.

THE ENACTMENT OF 18 U.S.C. § 1151

In 1934, Congress enacted the Indian Reorganization Act (IRA). Pub. L. No. 73-383, 48 Stat. 984 (1934). The IRA authorized "any Indian tribe, or tribes, residing on the same reservation" to adopt a constitution approved by the Secretary of the Interior, and authorized the Secretary to issue the same tribes "a charter of incorporation."

Since 1884, Congress had subjected Alaska Natives to the same civil and criminal jurisdiction to which it subjected non-Natives. For that reason, Congress had not recognized Native residents of Native villages as "tribes" whose governing bodies possessed a limited political sovereignty.[6] As a consequence, Alaska Natives were not

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[6] "The term 'tribe' is commonly used in two senses, an ethnological sense and a political sense," and "[i]t is important to distinguish between these two meanings." Felix S. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 268 (1943 ed.). The history of Congress's recognition of ethnological tribes as tribes that have a political existence which includes a limited political sovereignty is convoluted. *See* William W. Quinn, Jr., *Federal Acknowledgement of American Indian Tribes: The Historical Development of a Legal Concept*, American Journal of Legal History (October 1990). What can be said here is that prior to 1994, Congress did not recognize that Alaska Native ethnological tribes had a political existence. In 1978 the Secretary of the Interior adopted regulations that created an administrative procedure to enable Native American groups to petition for political recognition. 43 Fed. Reg. 39,361-64 (1978) (now codified at 25 C.F.R. Part 83). In 1982 the Secretary published a list of recognized tribes that did not include Alaska Native residents of Native villages. 47 Fed. Reg. 53,130-35 (1982). In 1993 the Secretary published a new list that unilaterally reversed more than a century of congressional policy by recognizing Alaska Native residents of Native villages

eligible for many of the benefits the IRA granted to Native Americans who were members of recognized tribes.

To alleviate the disparity, in 1936 the 74th Congress amended the IRA to authorize "groups of Indians in Alaska not heretofore recognized as bands or tribes" to adopt constitutions and receive corporate charters. Pub. L. No. 74-538, 49 Stat. 1250 (1936).

Section 2 of the 1936 Act also authorized the Secretary of the Interior to designate Indian reservations in Alaska. But as Assistant Secretary of the Interior William Warne in 1948 explained to the Senate Committee on Interior and Insular Affairs, the 74th Congress did not intend the designation of a reservation to divest the Alaska Territorial Legislature of jurisdiction within the boundaries of the reservation. *Repeal Act Authorizing Secretary of the Interior to Create Indian Reservations in Alaska: Hearings on S. 2037 and S. J. Res. 162 before a Subcomm. of the Senate Comm. on Interior and Insular Affairs*, 80th Cong., 2d Sess. 26 (1948) (statement of William E. Warne, Assistant Secretary, Department of the Interior).

Congress is presumed to be "knowledgeable about existing law pertinent to the legislation it enacts." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988).

– including the residents of respondent Native Village of Venetie – as tribes. 58 Fed. Reg. 54,364-69 (1993). In 1994, Congress enacted the Federally Recognized Indian Tribe List Act, Pub. L. No. 103-454, Title I, 108 Stat. 4791 (1994). The Act retroactively delegated the Secretary of the Interior authority to adopt his recognition regulations.

In 1948 the intent of previous Congresses that Assistant Secretary Warne summarized was the existing law about which the 80th Congress was knowledgeable, and which it did not intend to alter, when it enacted the 18 U.S.C. § 1151 definition of "Indian country." For that reason, subsequent to the enactment Executive Branch agencies consistently adhered to the view that the 80th Congress did not intend 18 U.S.C. § 1151 to apply to the Territory of Alaska. As Assistant Secretary of the Interior Roger Ernst explained to Congress in 1958: "[T]he general understanding had been that the many native villages in Alaska were not Indian country, and it had been the general practice for Territorial officers to apply Territorial law in the native villages." Letter from Roger Ernst to the Hon. Emanuel Celler (February 25, 1958), *reprinted in* S. Rep. No. 1872, 85th Cong., 2d Sess. 3 (1958).

THE ALASKA STATEHOOD ACT

In 1958 the 85th Congress enacted the Alaska Statehood Act. Pub. L. No. 85-508, 72 Stat. 339 (1958). "Between 1947 and 1956, hearings on Alaska statehood were conducted on seven different occasions in Washington and three times in Alaska. The printed record of these investigations amounted to approximately 4,000 pages." Claus-M. Naske, AN INTERPRETATIVE HISTORY OF ALASKAN STATEHOOD 151 (1973). At no time during those hearings, or during the statehood hearings held in 1957, did any witness suggest that a land withdrawal made for the benefit of Alaska Natives, either pursuant to § 2 of the 1936 Act or otherwise, was "Indian country," or that Native villages were "dependent Indian communities," as Congress intended those terms in 18 U.S.C. § 1151.

In § 1 of the Alaska Statehood Act, the 85th Congress codified that understanding by "accept[ing], ratif[ying], and confirm[ing]" the Alaska Constitution. By doing so, Congress intended Alaska residents, both Native and non-Native, their real property, and the organization of their municipal governments, both in Native villages and elsewhere, to be subject to the jurisdiction of the Alaska State Legislature.

When it enacted ANCSA, the 92d Congress reaffirmed that policy.

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

In 1884, § 8 of the Alaska Organic Act extended the Mining Law of 1872 to Alaska with the proviso

> That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them *but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.* (emphasis added)

In 1971 the 92d Congress exercised the decisionmaking authority that Congress reserved to itself in 1884 by enacting ANCSA. Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. § 1601 *et seq.*). In exchange for the conveyance of legal title in fee simple to forty-four million acres of land and the payment of $ 962.5 million in compensation, § 4(b) of ANCSA "extinguished" all "aboriginal titles" in Alaska.

When it crafted ANCSA, the 92d Congress reaffirmed the policy of previous Congresses that, since 1912, had

subjected Alaska Natives and the land within and surrounding their villages to the jurisdiction of the Alaska Territorial and State Legislatures.

In 1968 the Alaska Federation of Natives, Alaska Natives' statewide organization, presented Congress a bill which recommended that "Native groups" be afforded the "option to incorporate under the Indian Reorganization Act as an alternative to incorporation under Alaska law," as well as the option of being conveyed title to land either in fee simple "or in fee to a trustee for the native group." S. 2906, 90th Cong., 2d Sess. (1968), *reprinted in Alaska Native Land Claims: Hearings on S. 2906, et al., before the Senate Comm. on Interior and Insular Affairs*, 90th Cong., 2d Sess. 2-16 (1968).

Congress rejected both recommendations.

Sections 7(d) and 8(a) of ANCSA required Alaska Natives to organize corporations "under the laws of the State [of Alaska]." And § 14 required the Secretary of the Interior to issue the corporations patents that conveyed title to land in fee simple, rather than in trust.

Section 14(c)(3) also required each village corporation to reconvey "no less than 1,280 acres" within and surrounding the village "to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future." When read *in pari materia* with § 1 of the Alaska Statehood Act (which "accepted, ratified, and confirmed" the Alaska Constitution), § 14(c)(3) is an unambiguous expression by Congress of its intent that, post-ANCSA, the Alaska State Legislature and its political subdivisions would exercise jurisdiction both within and surrounding

Native villages and over ANCSA-conveyed fee simple land.

To ensure that there would be no misunderstanding, § 2(b) of ANCSA directed that the ANCSA settlement "be accomplished . . . without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] *without creating a reservation system.* . . . " (emphasis added). And to implement the latter directive, § 19(a) revoked the Venetie reservation and all other reserves "set aside . . . for Native use or for the administration of Native Affairs [other than the Annette Island Reserve]."

The legislative history of ANCSA is consistent with that clear expression of congressional policy.

H. R. 10367 was the bill the 92d Congress enacted as ANCSA. H. R. 3100, introduced by Rep. Wayne Aspinall, the chairman of the House Committee on Interior and Insular Affairs, was the precursor to H. R. 10367. When Alaska Governor Bill Egan testified on H. R. 3100 before the Committee's Subcommittee on Indian Affairs, he objected to Congress enacting any bill that would impinge upon "State jurisdiction" because "No Native claim to this land should be immune to the 'zoning' powers of the State, from jurisdiction over fish and game, water or air quality, or other policy, natural resource or environmental regulation." *Alaska Native Land Claims: Hearings on H. R. 3100, et al., before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs*, 92d Cong., 1st Sess. 128-29 (1971). *See also id.* 134-35 (statement of Alaska Attorney General John Havelock).

As the following colloquy between chairman Aspinall and Rep. John Kyl demonstrates, when the Subcommittee members met to discuss the bill that the Committee on Interior and Insular Affairs would report as H. R. 10367, they agreed that Governor Egan had identified a policy concern that H. R. 10367 should address:

Kyl: I would like to guarantee as far as possible that there is no possibility that these Native reservations will be considered at any time in the future as Native reservations or Indian reservations, knowing the tremendous problems that we have because of the Indian reservations in the forty-eight adjacent states. And there is a possibility – yes?

Aspinall: This troubles me, too, because it seems that the only possible way that we can do this is to find that these villages, wherever they may be, before they can take, must be incorporated under the laws of the State of Alaska which would be a final determination of their position . . .

. . .

In other words, what my colleague is saying, if the State of Alaska has any laws on the maintenance of, enhancement of, protection of ecological values, then these citizens of Alaska should conform in those respects, too, is that correct?

Kyl: Yes.

Rep. Sam Steiger then summarized the Subcommittee members' consensus as follows:

> I think it is important that we underscore this. I will not attempt to commit the balance of this side of the aisle, but I will tell you that having nine reservations within my congressional district, and having experienced almost without exception problems that are unique only to reservation structure, problems between reservations, as between reservations and state and federal government, I would hope that we would not in the report but in the bill itself [include] language that would clearly exempt whatever is established from reservation status and I think that would be – I suspect anybody on the committee who has had similar experiences will endorse that.

Transcript of June 21, 1971 Executive Session of the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 92d Cong., 1st Sess. (1971). Record Group 233. Center for Legislative Archives. National Archives. Washington, D.C.

To codify the consensus, the House Committee on Interior and Insular Affairs included a section in H. R. 10367 that became § 2(b) of ANCSA and then explained in its report on the measure that:

> The bill does not establish any trust relationship between the Federal Government and the Natives. The regional corporations and the village corporations will be organized under State law, and will not be subject to Federal supervision except to the limited extent specifically provided in the bill. All conveyances of land will be in fee – not in trust.

H. R. Rep. No. 523, 92d Cong., 1st Sess. 9 (1971).

When H. R. 10367 passed the U.S. House of Representatives, the Senate adopted an amendment in the nature of a substitute. But embracing the House consensus, in its report on the bill that became the amendment the Senate Committee on Interior and Insular Affairs explained that: "A major purpose of this Committee and the Congress is to avoid perpetuating in Alaska the reservation and the trustee system which has characterized the relationship of the Federal government to the Indian peoples in the contiguous 48 states." S. Rep. No. 405, 92d Cong., 1st Sess. 108 (1971).

A House-Senate Conference Committee wrote the text of H. R. 10367 enacted into law. The Committee also distributed a Joint Statement which explained that "the conference committee does not intend that lands granted to Natives under this Act be considered 'Indian reservation' lands for purposes other than those specified in this Act. The lands granted by this Act are not 'in trust' and the Native villages are not Indian 'reservations.' " H. R. Rep. No. 746, 92d Cong., 1st Sess. 40 (1971).

THE ADVERSE EFFECT OF THE DECISION BELOW

In the decision below, the circuit court's lack of familiarity with Congress's Alaska Native policy is regrettable. But the circuit court had an obligation to interpret the intent of Congress embodied in ANCSA by looking "to

the provisions of the whole law, and to its object and policy." *U.S. Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 455 (1993). For that reason, the court's disregard of the policy § 2(b) of ANCSA unambiguously expresses is simply inexplicable. And unless corrected, the circuit court's error will inflict untold damage on the people of Alaska, both Native and non-Native, and on implementation of the ANCSA settlement.

If the error is not corrected, political subdivisions of the State of Alaska may be divested of jurisdiction both within more than 200 Alaska communities and throughout the entire Alaska unorganized borough that Congress recognized when it ratified the Alaska Constitution. As Governor Egan feared and the 92d Congress intended ANCSA to prevent, the State of Alaska may be divested of jurisdiction over the taking of fish and game, water and air quality, and other natural resource and environmental regulation on as many as forty-four million acres of fee simple land. As the facts in the case at bar illustrate, economic activity on the same fee simple land may be subjected to taxation pursuant to the inconsistent standards of more than two hundred taxing authorities. And most importantly, Congress's decision, made in 1884 and reaffirmed in ANCSA, to establish a new Indian policy in Alaska will have been abrogated by judicial fiat.

CONCLUSION

For the foregoing reasons, amicus curiae urges the Court to grant the State of Alaska's petition for certiorari.

Respectfully submitted,

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